form of jurisdiction over quasi-contracts. In *Chudnovski* v. *Eckels,* the court quotes BLACKSTONE, 3 COMM. 158, to show that the term "implied contract" includes what is called a contract implied in law. However, the court seems to have overlooked the fact that the learned writer in that very portion of his work included a tax in the same category, as is evidenced by the fact that he used a statutory obligation as one example of implied contract. In the case of *Harty Bros.* v. *Polakow,* the action was based on a statutory lien, a mere duty or obligation, as it were, and jurisdiction was taken with implied contract as the basis. Several well considered cases outside of Illinois have held that a tax is an obligation based on an implied contract. *State of Nevada* v. *Y. J. M. Co.,* 14 Nev. 220; *City of Dubuque* v. *Ill. Cent. R. R. Co.,* 39 Iowa 56.

It is evident, then, that the Illinois court defines "implied contract" as more extensive than contract implied in fact, but not so extensive as to include all non-contractual obligations termed contract for the sake of the remedy only. Why should there be a middle course? "The term 'quasi-contracts' may with propriety be applied to all non-contractual obligations which are treated for the purpose of affording a remedy as if they were contracts. So interpreted, the subject includes: (1) judgments and other so-called contracts of record; (2) a number of official and statutory obligations * * * ; (3) obligations arising from 'unjust enrichment,'—that is, the receipt by one person from another of a benefit the retention of which is unjust. But in view of the fact that nearly all of the obligations included in the first two classes are commonly known and treated under more specific designations, or as parts of other clearly defined topics, while those of the third class have no other distinctive name whatever, it is believed that the term 'quasi-contracts,' for the sake of convenience, should ordinarily be applied to obligations of the third class only." WOODWARD, LAW OF QUASI-CONTRACTS, 1. There is a great deal to be said in making the criterion of jurisdiction one of remedy or form rather than one of substance, for then a court can determine whether it has jurisdiction by merely examining the most general pleadings. And this in spite of the position taken by the United States Court of Claims. However, there can be little justification for taking jurisdiction over one obligation which is contractual only for remedy's sake, and refusing to take jurisdiction over another similar non-contractual obligation which can be enforced by a contractual remedy. The Illinois court, in order to be thoroughly consistent with its rulings in previous cases, which carried jurisdiction over contracts into the realm of quasi-contractual obligations, should have held that the Chicago Municipal Court had jurisdiction of the cause of action in the principal case. H. G. G.

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CONSTITUTIONAL AMENDMENTS, SELF-EXECUTING AND OTHERWISE, PROVIDING FOR THE INITIATIVE AND REFERENDUM.—The question of whether or not a provision of a state constitution, which provided that amendments thereto might be made by initiative petition, was self-executing, was presented to the Supreme Court of North Dakota in the recent case of *State*

*ex rel. Linde, Atty. Gen. et al.* v. *Hall, Secretary of State,* 159 N. W. 281. North Dakota, at the same time it adopted the initiative for constitutional amendments, also changed its constitution so as to permit of the initiative and referendum upon questions of general legislation; but the constitutional provision pertaining to this expressly stated that it was intended to be self-executing and thus the question here presented did not arise in the construction of the amendment pertaining to the initiative and referendum upon general legislation. Oregon, Oklahoma, Missouri, Arkansas, Washington, California, Colorado, Arizona, South Dakota, New Mexico, and Nevada have also at different times provided for the initiative and referendum through constitutional provisions. Of these constitutional provisions, some were clearly stated to be self-executing; while others were so worded as to make it evident that it was not intended that they should be self-executing, but rather that they should be construed as mandates to the legislatures of the respective states, who, acting thereunder, should pass laws effectuating and putting into force the principles thus set forth. However, there is a third class, of which *Hall* v. *State* is typical, wherein the constitutional provision was so worded as to throw doubt upon its purpose and render a judicial determination necessary.

A terse way of summing up the distinction between self-executing provisions and those which are not, is to say that self-executing provisions are addressed to the courts while those that are not are addressed to the legislatures. *Willis* v. *Mabon,* 48 Minn. 140, 50 N. W. 1110, 16 L. R. A. 281, 31 Am. St. Rep. 626; *State* v. *Kyle,* 166 Mo. 287, 65 S. W. 763, 56 L. R. A. 115. Constitutional provisions are "self-executing where it is the manifest intention that they should go into effect and no ancillary legislation is necessary to the enjoyment of a right given or the enforcement of a duty or liability imposed." *State* v. *Harris,* 74 Ore. 573, 144 Pac. 109; *State* v. *Swan,* 1 N. D. 5, 13, 44 N. W. 492. In other words, the constitutional provision must be regarded as self-executing if an examination and construction of the provision itself will disclose the rights conferred or the duties imposed. However, if merely general principles are laid down, and the legislature must supplement the constitutional provision by passing laws to effectuate its purpose, then it is not self-executing.

Oregon in 1902 amended its constitution so as to permit the initiative and referendum, providing for a general reservation by the people of the power to propose laws and amendments to the constitution and to enact or reject the same at the polls, and also the power to approve or reject at the polls any act of the legislative assembly. It not being evident whether or not the amendment was intended to be self-executing, the court was called upon to construe the following portion: "Petitions and orders for the initiative and referendum shall be filed with the Secretary of State, and in submitting the same to the people he, and all other officers, shall be guided by the general laws and the act submitting this amendment until legislation shall be especially provided for." The court construed the provision to be self-executing, considering that the purpose was to insure the enforcement of the provision through its own strength and not to make its efficacy depend-

ent upon some future action on the part of the legislature, lest its effect be thwarted by the refusal by the legislature to obey its mandates. The court considered that the reference to future legislation was an acknowledgment that it might be advisable to enact laws to facilitate the enforcement of this constitutional provision, but that a provision may still be self-executing though not so complete as to render supplemental legislation unnecessary. *Stevens* v. *Benson,* 50 Ore. 269, 91 Pac. 577. The initiative and referendum were still further extended in Oregon by a constitutional provision which provided for the initiative and referendum as to municipal legislation, the amendment reading that "the manner of exercising said powers shall be prescribed by general laws." In construing this amendment, the court came to the opinion that it was not self-executing, as "it only declares or reserves the right, without laying down rules by means of which this right may be given the force of law." *Long* v. *City of Portland,* 53 Ore. 92, 98 Pac. 149.

The Oklahoma provision as to the initiative and referendum had provided that "the legislature shall make suitable provisions for carrying into effect the provisions of this article." The court had no difficulty in determining that the intention of the constitutional convention had been that this should be construed only as a mandate to the Legislature, and giving effect to this intention, it was declared not to be self-executing. *Ex parte Wagner,* 21 Okla. 33, 95 Pac. 435.

The provision in the Missouri constitution was very similar to that one discussed in *Stevens* v. *Benson,* 50 Ore. 269, *supra,* and the Missouri court assumed the same to be self-executing. *Edwards* v. *Lesneur,* 132 Mo. 410, 31 L. R. A. 815. The Arkansas provision upon the subject was borrowed from the Oregon constitution, and the Oregon court in *Stevens* v. *Benson, supra,* having determined the same to be self-executing, the Arkansas court did likewise, (*State* v. *Moore,* 103 Ark. 48, 145 S. W. 199) doubtless having regard for the general rule that where one state borrows a constitutional provision from another state that has previously been construed by the courts of such state, such construction is presumed to be adopted along with the provision. *McGrew* v. *Mo. Pac. R. Co.,* 231 Mo. 496, 132 S. W. 1077.

The Colorado provision is very similar to the one adopted in Oregon. However, it does not expressly state that it is intended to be self-executing, nor does it make reference to future legislation as indicating that it was not presumed to be self-executing. It provides the percentage of voters necessary to propose a measure, to whom the petition should be addressed, the time previous to election within which it must be filed, and that a majority vote is sufficient to enact the petition into law. It appears that the court has construed this to be self-executing by upholding a constitutional amendment which was initiated and passed by force of this constitutional provision. The court stated: "Whenever a constitutional amendment is attacked because of alleged violation of the Constitution in its submission, it must appear beyond a reasonable doubt, both as to law and fact, that the Constitution has been violated before the amendment would be overthrown." *People* v. *Prevost,* 55 Colo. 199, 134 Pac. 129.

The provisions in the constitutions of Nevada, California, South Dakota, and New Mexico will need no attention in this connection, as the former two state expressly that they are intended to be self-executing, while the latter two clearly indicate that they were not expected to be self-executing.

As previously stated, North Dakota has provided for the initiative and referendum upon general legislation by a constitutional amendment which had affirmatively provided that the same was to be self-executing. This provision was proposed and passed by the 1911 legislature and again passed by the 1913 legislature (Senate bill No. 32, chapter 101, 1913 Session Laws), and having been ratified by a vote of the people, it became incorporated as a part of the constitution. The constitutional provision construed in the case of *State* v. *Hall, supra,* granted the privilege of amending the constitution through initiative petition. This constitutional amendment was adopted through much the same procedure as that followed in changing the constitution so as to permit the initiative and referendum upon general legislation. It was introduced and passed by the 1911 legislature (Senate Bill 153, chapter 89, Session Laws 1911), and having been ratified by a vote of the people, this provision permitting the constitution to be amended through initiative petition had now become a part of the state constitution (§202). A petition fulfilling the requisites so far as set forth in the constitutional amendment was now filed with the Secretary of State which sought to amend §215 of the state constitution so as to remove the capitol from Bismarck to New Rockford. Relators insisted that the petition was void, inasmuch as the constitutional amendment under which petitioners were proceeding was not self-executing and no supplemental legislation had been passed thereunder to put the same into effect. Therefore, they sought to enjoin the Secretary of State from submitting the question contained in the petition to a vote of the people. That part of the constitutional amendment which bore upon the question of whether or not the same was self-executing (subdivision 2, §202) read as follows:

"Any amendment or amendments to this Constitution may also be proposed by the people by the filing with the Secretary of State, at least six months previous to a general election, of an initiative petition containing the signatures of at least twenty-five per cent of the legal voters in each of not less than one-half of the counties of the state. When such petition has been properly filed, the proposed amendment or amendments shall be published as the Legislature may provide, for three months previous to the general election, and shall be placed upon the ballot to be voted upon by the people at the next general election."

The court construed the phrase "as the Legislature may provide" to be indicative of future legislation as to the manner of publishing the proposed amendment, but inasmuch as there was a general provision in force as to the manner in which proposed constitutional amendments should be given publicity (§979 of Political Code of 1913) it was argued that this phrase, "as the Legislature may provide," referred to the method already in use for advertising proposed constitutional amendments. Surely the omission to state expressly the manner of publication would not have in itself defeated the

self-execution of the amendment. The court, not finding it evident from an examination of the amendment itself that the same was self-executing or the contrary, proceeded to determine the question from the intention of the framers, and to determine that intention a resort to extrinsic matters was found necessary. *Fuzz* v. *Spaunhorst,* 67 Mo. 256.

It was discovered that the wording of the constitutional provision in question was taken from the section bearing on the same subject in the Oregon constitution, the similarity of the language employed indicating that one was patterned after the other. However, the North Dakota legislature failed to adopt the last clause of the Oregon provision, "Petitions and orders for the initiative and referendum shall be filed with the Secretary of State, and in submitting the same to the people he, and all other officers, shall be guided by the general laws and the act submitting this amendment until legislation is especially provided for." As the Oregon courts, previous to the adoption by North Dakota of the former state's constitutional provision on the question of amendment of constitution by initiative petition, had decided that the insertion of this particular clause determined the constitutional amendment to be self-executing (*Stevens* v. *Benson,* supra), then it would seem, from the fact that the North Dakota legislature had in its adoption eliminated this clause, that the legislature did not intend that the amendment which it was framing was to be considered self-executing. *McGrew* v. *Mo. Pac. R. Co.,* 230 Mo. 496, 132 S. W. 1077; *Fitzmaurice* v. *Willis,* 20 N. D. 372, 127 N. W. 95; *Commonwealth* v. *Harnett,* 3 Gray (Mass.) 450; *Pennock* v. *Dialogue,* 2 Pet. 1, 7 L. Ed. 327; *Hogg* v. *Emerson,* 6 How. 482, 12 L. Ed. 505.

Inasmuch as the court will look to the words of the constitutional amendment itself for a determination of whether or not the same is self-executing, why would it not be wise for the Legislature to insert in every such provision some clause indicating the intent? "This section shall be self-executing," or, if it is thought necessary, add, "but legislation may be enacted especially to facilitate its operation." On the other hand, if it is the intention that the amendment should not be construed as self-executing, let a clause be inserted which would clearly and unequivocally state that the same was not self-executing, or plainly indicate that it was to be considered only as a mandate to succeeding legislatures,—"The Legislature shall make suitable provisions for carrying into effect the provisions of this amendment." Let some express provision be inserted wherever there is the slightest possibility of the question arising. Those who frame the law can best state whether or not it is intended to be full and complete in itself, or merely an outline of a general policy for the guidance of future legislation. To neglect to insert some such clause will often give rise to the necessity of a judicial determination of the question,—a possibility which may not occur to the framer of the amendment because of his own familiarity with its intention. Not only are cost and delay saved, but also the disappointment of those who have relied on a construction of the provision opposite to that determined upon by the court.

W. L. O.